

## SENATE BILL No. 176

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 33-37-2; IC 35-38.

**Synopsis:** Collection of fines and court costs. Permits a court to suspend payment of fines and court costs until a convicted person has completed all or part of the person's sentence. Grants a court continuing jurisdiction over the convicted person until the fines and costs are completely paid, and authorizes a court to use contempt proceedings to enforce its order for payment. Makes conforming amendments.

**Effective:** July 1, 2005.

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**Dillon**

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January 4, 2005, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## SENATE BILL No. 176

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 33-37-2-2 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Costs in a  
3       criminal action are not a part of the sentence and may ~~not~~ be suspended  
4       **only under section 3 of this chapter.** However, if:

5               (1) two (2) or more charges against a person are joined for trial;  
6               and

7               (2) the person is convicted of two (2) or more offenses in the trial;  
8       the court may waive the person's liability for costs for all but one (1) of  
9       the offenses.

10       (b) If a person is acquitted or an indictment or information is  
11       dismissed by order of the court, the person is not liable for costs.

12       SECTION 2. IC 33-37-2-3 IS AMENDED TO READ AS  
13       FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) **Except as**  
14       **provided in subsection (b),** when the court imposes costs, it shall  
15       conduct a hearing to determine whether the convicted person is  
16       indigent. If the person is not indigent, the court shall order the person  
17       to pay:

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- (1) the entire amount of the costs at the time sentence is pronounced;
- (2) the entire amount of the costs at some later date; or
- (3) specified parts of the costs at designated intervals.

**(b) A court may impose costs and suspend payment of all or part of the costs until the convicted person has completed all or part of the sentence. If the court suspends payment of the costs, the court shall conduct a hearing at the time the costs are due to determine whether the convicted person is indigent. If the convicted person is not indigent, the court shall order the convicted person to pay the costs at the time the costs are due, or in a manner set forth in subsection (a)(2) through (a)(3).**

**(c) If a court suspends payment of costs under subsection (b), the court retains jurisdiction over the convicted person until the convicted person has paid the entire amount of the costs.**

~~(b)~~ **(d)** Upon any default in the payment of the costs:

- (1) an attorney representing the county may bring an action on a debt for the unpaid amount; ~~or~~
- (2) the court may direct that the person, if the person is not indigent, be committed to the county jail and credited toward payment at the rate of twenty dollars (\$20) for each twenty-four (24) hour period the person is confined, until the amount paid plus the amount credited equals the entire amount due; ~~or~~
- (3) the court may institute contempt proceedings to enforce the court's order for payment of the costs.**

~~(c)~~ **(e)** If, after a hearing under subsection (a), the court determines that a convicted person is able to pay part of the costs of representation, the court shall order the person to pay an amount of not more than the cost of the defense services rendered on behalf of the person. The clerk shall deposit the amount paid by a convicted person under this subsection in the county's supplemental public defender services fund established under IC 33-40-3-1.

~~(d)~~ **(f)** A person ordered to pay part of the cost of representation under subsection ~~(c)~~ **(e)** has the same rights and protections as those of other judgment debtors under the Constitution of the State of Indiana and Indiana law.

SECTION 3. IC 35-38-1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. (a) **Except as provided in subsection (b),** whenever the court imposes a fine, it shall conduct a hearing to determine whether the convicted person is indigent. If the person is not indigent, the court shall order:

- (1) that the person pay the entire amount at the time sentence is

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pronounced;

(2) that the person pay the entire amount at some later date;

(3) that the person pay specified parts at designated intervals; or

(4) at the request of the person, commitment of the person to the county jail for a period of time set by the court in lieu of a fine. If the court orders a person committed to jail under this subdivision, the person's total confinement for the crime that resulted in the conviction must not exceed the maximum term of imprisonment prescribed for the crime under IC 35-50-2 or IC 35-50-3.

**(b) A court may impose a fine and suspend payment of all or part of the fine until the convicted person has completed all or part of the sentence. If the court suspends payment of the fine, the court shall conduct a hearing at the time the fine is due to determine whether the convicted person is indigent. If the convicted person is not indigent, the court shall order the convicted person to pay the fine at the time the fine is due, or in a manner set forth in subsection (a)(2) through (a)(4).**

**(c) If a court suspends payment of a fine under subsection (b), the court retains jurisdiction over the convicted person until the convicted person has paid the entire amount of the fine.**

~~(b)~~ **(d) Upon any default in the payment of the fine:**

(1) an attorney representing the county may bring an action on a debt for the unpaid amount; ~~or~~

(2) the court may direct that the person, if the person is not indigent, be committed to the county jail and credited toward payment at the rate of twenty dollars (\$20) for each twenty-four (24) hour period the person is confined, until the amount paid plus the amount credited equals the entire amount due; ~~or~~

**(3) the court may institute contempt proceedings to enforce the court's order for payment of the fine.**

SECTION 4. IC 35-38-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The court may revoke a person's probation if:

(1) the person has violated a condition of probation during the probationary period; and

(2) the petition to revoke probation is filed during the probationary period or before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(b) When a petition is filed charging a violation of a condition of probation, the court may:

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(1) order a summons to be issued to the person to appear; or

(2) order a warrant for the person's arrest if there is a risk of the person's fleeing the jurisdiction or causing harm to others.

(c) The issuance of a summons or warrant tolls the period of probation until the final determination of the charge.

(d) The court shall conduct a hearing concerning the alleged violation. The court may admit the person to bail pending the hearing.

(e) The state must prove the violation by a preponderance of the evidence. The evidence shall be presented in open court. The person is entitled to confrontation, cross-examination, and representation by counsel.

(f) Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay.

(g) If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:

(1) continue the person on probation, with or without modifying or enlarging the conditions;

(2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or

(3) order execution of the sentence that was suspended at the time of initial sentencing.

(h) If the court finds that the person has violated a condition of home detention at any time before termination of the period, and the petition to revoke probation is filed within the probationary period, the court shall:

(1) order a sanction as set forth in subsection (g); and

(2) provide credit for time served as set forth under IC 35-38-2.5-5.

(i) If the court finds that the person has violated a condition during any time before the termination of the period, and the petition is filed under subsection (a) after the probationary period has expired, the court may:

(1) reinstate the person's probationary period, with or without enlarging the conditions, if the sum of the length of the original probationary period and the reinstated probationary period does not exceed the length of the maximum sentence allowable for the offense that is the basis of the probation; or

(2) order execution of the sentence that was suspended at the time of the initial sentencing.

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1 (j) If the court finds that the person has violated a condition of home  
2 detention during any time before termination of the period, and the  
3 petition is filed under subsection (a) after the probation period has  
4 expired, the court shall:

5 (1) order a sanction as set forth in subsection (i); and

6 (2) provide credit for time served as set forth under  
7 IC 35-38-2.5-5.

8 (k) A judgment revoking probation is a final appealable order.

9 (l) Failure to pay fines or costs required as a condition of probation  
10 may not be the sole basis for commitment to the department of  
11 correction.

12 (m) Failure to pay fees or costs assessed against a person under  
13 IC 33-40-3-6, ~~IC 33-37-2-3(c)~~, **IC 33-37-2-3(e)**, or IC 35-33-7-6 is not  
14 grounds for revocation of probation.

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